HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

CORAM: **HON'BLE SHRI S.R. NAYAK, C.J. &**
HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO.3317 OF 2003

PETITIONERS:

1. Satyadeo Rai, S/o Kapil Deo Rai, aged about 38 years, C/o Shri K.K. Singh, Type I, Q.No.1 P&T colony, Sector 5, Bhilai Nagar, Tahsil and District Durg (C.G.)

2. Ishwarlal S/o Kartikram Sahu, aged about 37 years, R/o Village Jora Tarai, Post Mangta, Tahsil and District Rajnandgaon (C.G.)

3. Gariba Ram S/o Firtu Ram (Maithil –chhatri), aged about 42 years, resident of village Damoda, Post Borai, District Durg (C.G.)

4. Parmanand Sahu, S/o Bisesar Sahu, aged 45 years, resident of Village Jora Tarai Post. Mangta, Tahsil and District Rajnandgaon (C.G.)

5. Sanjay Kumar Mishra, S/o Shri Ram Mishra, aged about 35 years, resident of Gandhi Nagar, Bhilai 3, Tahsil and District Durg (C.G.)

6. Arjun Singh S/o Jagdish, aged about 44 years, Resident of Village Ruabandha, Azad Chowk, Post section 10, Bhilai Nagar, Tehsil and District Durg (C.G.)

7. Biselal S/o Kartik Ram, aged about 48 years, resident of Village Kodia, Post Pauwara, P.s. Utai, Tahsil and Distt. Durg (C.G.)

8. Shiv Kumar S/o Kublal Chandrakar, aged about 38 years, resident of Shitla Nagar, Near Amatalab, Durg (C.G.)

	9.	Yograj Moukhare S/o Shri Hagruji Noukhare aged about 39 years, R/o Rajeev Nagar, Post Ramanagar, Suphela Bhilai District Durg (C.G.)
	Versus	
RESPONDENTS:	1.	The Union of India, through the Secretary, Telecommunication Commission, New Delhi.
	2.	Divisional Officer, Telecommunication/DET, Durg at Raipur (Chhattisgarh)
	3.	Sub Divisional Officer (Phones) Durg, District Durg (C.G.)

Present: Smt. Renu Kochar, learned counsel for the petitioners.
Shri Bhishma Kinger, learned counsel for respondent No.1
Shri R.M. Solapurkar, learned counsel for respondents 2 and 3.

(ORAL ORDER)
(Passed on 18th April, 2006)

The following order of the Court was passed by **S.R. Nayak, CJ.**

The petitioners nine in number and five others have filed Contempt of Court Petition No.26/1997 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short 'the Tribunal'), complaining that the writ issued by the Tribunal vide order dated 28-8-1995 was deliberately violated and, therefore, the respondents should be punished. The Tribunal by its order dated 11-2-2003 dropped the contempt case and discharged the notices issued to the respondents. Being aggrieved by the above order of the Tribunal, this writ petition is filed under Article 226 of the Constitution of India.

2. The facts of the case leading to filing of the above Contempt of Court Petition be noted in the first instance, and they, in brief, are as follows: -

The petitioners herein and several others filed O.A.No.411/1990 and connected O.As before the Tribunal complaining that though they had been serving on daily wage basis for number of years, their services were not regularized. It was also complained that they are workmen within the meaning of that term as defined in Section 2 (s) of the Industrial Disputes Act, 1947 (for short ' the Act'), and their services were terminated without complying with the mandatory provisions of Section 25F of the Act. The Tribunal having opined that the services of those daily wagers appointed before 22-6-1988 ought not to have been terminated and that even the termination of the services of those daily wagers appointed after 22-6-1988 without complying with the mandatory provisions of Section 25F of the Act is illegal, disposed of the O.As and issued the following directions: -

> "For the reasons stated above, the petitions are partly allowed, and it is directed that in cases where appointments are made prior to 22.6.1988, such employees shall be regularized and in cases where appointments are made after 22.6.1988 and termination orders have been passed without payment of retrenchment compensation, the orders of termination are quashed. There shall be no order as to costs."

3. The petitioners and five others filed the above contempt petition No.26/1997 complaining that in terms of the order of the Tribunal dated 28-8-1995 passed in O.A.No.411/90 and the batch, their services

ought to have been regularized, because, they were appointed as daily wagers before 22-6-1988. The contempt case was opposed by the respondents. In the reply filed on behalf of the Chief General Manager, Telecommunications, M.P. Circle, Bhopal, the first respondent, it was claimed that after the above order of the Tribunal dated 28-8-1995, the Telecom District Manager was asked to verify the number of days of work put in by the 14 applicants in the contempt case, in different calendar years and the Telecom District Manager in his report stated that none of the 14 applicants except Arjun Singh, applicant No.11, had worked prior to 1989. In that view of the matter, the services of the petitioners are not regularized. The Tribunal accepting the above defence of the first respondent dropped the contempt proceedings and discharged the notices by the impugned order. Hence, this writ petition by the aggrieved daily wagers.

4. We have heard learned counsel for the parties and perused the material documents appended to the writ petition. There is no controversy between the parties that the order made by the Tribunal in O.A.No.411/90 and batch, dated 28-8-1995 has become final and the respondents are bound by that order. The consequences that flow from the above order are that if the petitioners were appointed as daily wagers on or before 22-6-1988, by virtue of the order of the Tribunal, their services are required to be regularized; secondly, even in case of others who were appointed as daily wagers after 22-6-1988, if their services were terminated without complying with the mandatory provisions of Section 25F of the Act, they are also entitled to be reinstated into service in the same position they held before the termination of their services.

5. In this case, we are not called upon to decide the case of second category of employees. It is the specific case of all the petitioners that they were appointed as daily wagers prior to 22-6-1988. In support of their claim, in contempt case, they have filed Annexure P-2 at pages from 21 to 28, Annexure P-3 at pages from 29 to 36 and Annexure P-5A. If we go by the above documents, it would show that the petitioners were appointed as daily wagers well before the cut off date, i.e., 22-6-1988. Unfortunately, the Tribunal has not considered these documents in the way expected of it. Having perused the impugned order of the Tribunal, we have reason to say that the Tribunal has swayed away by what is stated in the affidavit of R.S. Dhruve, SD (E) Public Grievances. This Gentleman Officer, as could be seen from para 7 of the order, quite curiously states - **"certificate was not given by me at any point of time. The certificate was given by the then Telecom District Engineer, namely, Shri P. Singh, who has already retired from service. I had simply attested the certificate given by Shri P. Singh, the then Telecom District Engineer certifying his signatures. I have not gone through the record at any point of time".** Should we say that what is stated by a senior officer like SD (E) Public Grievances reflects high grade irresponsibility. It is unfortunate that the Tribunal without properly appreciating the irresponsible statement made by Shri R.S. Dhruve, SD (E) Public Grievances, accepted his statement as a gospel truth and completely ignored the number of documents produced by the petitioners in support of their claim, and dropped the contempt proceedings. It is expected of an adjudicatory forum to critically consider all relevant materials and evaluate their evidentiary value in the decision-

making. We are constrained to observe that the Tribunal in this case did not act in the way expected of it.

6. We think that the ends of justice would be met by directing the respondents Telecom Administration to fairly consider the claims of the petitioners *denovo* in the light of all relevant materials and giving fair opportunity to them to have their say in the matter and also taking into account the documentary evidence adduced by them. We hope and trust that the Telecom Administration would act fairly and reasonably and without being influenced by any of the observations made by the Tribunal in the impugned order or the skin-saving statement made by R.S. Dhruve, SD (E) Public Grievance, in his affidavit filed in the contempt case. We direct the Chief General Manager, BSNL, Chhattisgarh Circle, Raipur, to entrust the job of verifying the material particulars of the services of the petitioners to a responsible officer of the Department and then to take appropriate action, in accordance with law. The above direction shall be complied within three months.

7. The writ petition stands disposed of in the above terms. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Subby